IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. 10/689,027

Applicant: Muskin

Filed: 10/21/2003

Group Art Unit: 3714

Customer No. 43,536

Commissioner for Patents
P.O. Box 1450
Alexandria Va 22313-1450

REQUEST FOR SUSPENSION OF ACTION UNDER 37 CFR 1.103

Sir:

The Applicant respectfully requests under 37 CFR 1.103(a) a suspension of action by the Examiner/Office for this application for a period of 6 months.

The applicant submits that there is good and sufficient cause for temporarily suspending USPTO action. Claims 31-34 in the instant application are copied from patent number 7,017,909, which has a later filing date than the instant application. A Request for Reexamination has been filed for that patent (which has been assigned reexamination number 90/008,559). In view of MPEP 2306.01, the present application cannot be allowed even though 7,017,909 is not prior art to this application.

Requesting an interference by the applicant at this time would be an unnecessary burden on USPTO resources and would also complicate matters, since it is not known at this time what the outcome of the reexamination will be. If suspension is not granted, then the applicant will have no choice but to request an interference since the case cannot be allowed in view of MPEP 2306.01. However, it is not clear whether interference proceedings can (or should) be initiated at this time since the 7,017,909 patent may not survive the reexamination which is based on the publication of the instant application.

Note that the period of a suspension requested by Applicant does not count towards patent term extension, thus it is not applicant's intention to benefit from suspension in any manner other than described above.

The Applicant submits herewith the fee as required by 37 CFR 1.103(2). However, this subsection states that the fee does not have to be included if such cause is the fault of the Office. The Applicant submits that since this application is prior art under 35 U.S.C. § 102(e) to the 7,017,909 patent, it should have been found and cited against 7,017,909 during prosecution of same. Thus, Applicant respectfully requests that he not be charged (or be refunded) the fee.

Respectfully submitted,
/Jonathan H. Muskin #43,824/